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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/989,886	11/21/2001	David George Robert Gourley	2-3	1512

7590 07/12/2005

Docket Administrator (Rm. 3J-219)  
Lucent Technologies Inc.  
600 Mountain Avenue  
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EXAMINER

HAMANN, JORDAN J

ART UNIT PAPER NUMBER

2667

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Sm

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/989,886		GOURLEY ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Jordan Hamann		2667	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7 and 8 is/are rejected.
- 7) ☒ Claim(s) 3,5,6,9 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 1001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/21/2001</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Claim Objections***

Claim 5 objected to because of the following informalities: it is dependent upon claim 3, but it appears that it was meant to be dependent on claim 4 and has been treated as such. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation "network" in management systems. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-5 and 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Baidon et al. (US 5,699,348).

With respect to claim 1 Baidon discloses in Figure 1 a telecommunications transport network (1) comprising: a plurality of network elements (30-33) each having a performance monitoring facility operative to report overall error rate at the element in each network path using the element (column 3 lines 65-67), and one or more management systems operative to calculate performance of a segment of a path between two network elements, from the reported overall error rates at the elements (100 and 120).

With respect to claim 2 Baidon discloses in Figure 2 a network as claimed in claim 1 which a facility is provided to record a maximum error rate, for a given segment of a path for which segment performance is calculated, and including a facility for issuing an alarm if the calculated error rate is closer to the recorded maximum error rate than a predetermined amount (232 and 234).

With respect to claim 4 Baidon discloses a method of operating a telecommunications transport network comprising a plurality of network elements each having a performance monitoring facility, the method comprising: reporting overall error rate at the element in a network path using the element (column 4 lines 22-25), and calculating performance of a segment of a path between two network elements, from the reported overall error rates at the elements (column 6 lines 56-59).

With respect to claim 7 Baidon discloses an apparatus for providing performance monitoring of a telecommunications transport network comprising: a performance

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monitoring facility coupled to designated network elements (Figure 1 Elements 30-33), said performance monitoring facility operative to report overall error rate at the element in each network path using the element (column 4 lines 22-25), and one or more management systems (Figure 1 Elements 100 and 120) operative to calculate performance of a segment of a path between two network elements, from the reported overall error rates at the elements (column 6 lines 56-63).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baidon et al. (US 5,699,348) in view of Chum (US 4,710,924).

Baidon discloses a method as claimed in claim 4, see 102 rejection above, including recording a maximum error rate, for a given segment of a path for which segment performance is calculated, and issuing an alarm if the calculated error rate is closer to the recorded maximum error rate than a predetermined amount (Figure 2 Elements 232 and 234).

Baidon does not disclose expressly switching the path between the elements, if the calculated error rate is closer to the recorded maximum error rate than a predetermined amount.

Chum discloses that it is common knowledge and practice in the art to switch the path between the elements if the calculated error rate is closer to the recorded maximum error rate than a predetermined amount (column 1 lines 34-41).

Baidon and Chum are analogous art because they are in the same field of endeavor, error performance monitoring of telecommunications networks.

At the time of the invention it would have been obvious to a person of ordinary skill in the art to modify the system of Baidon with the teaching of Chum to switch a path when the error rate reaches a threshold to minimize or prevent loss or corruption of data.

#### ***Allowable Subject Matter***

Claims 3, 6, 9 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

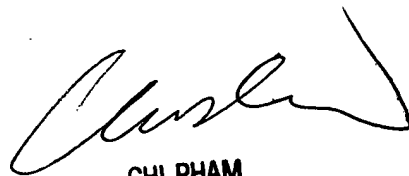
#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jordan Hamann whose telephone number is (571) 272-8564. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on (571) 272-3179. The fax phone number for the organization where this application or proceeding is assigned is (571) 272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JJH

  
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SUPERVISORY PATENT EXAMINER  
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